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**Malden Publications, Inc., Eastern Middlesex Press Publications, Inc. and Boston Typographical Union No. 13, a/w Printing, Publishing and Media Sector, Communications Workers of America, AFL-CIO.** Cases 1-CA-32310 and 1-CA-32638

December 11, 1995

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

Upon charges and amended charges filed by the Union on November 14, 1994, and February 22 and May 16, 1995, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on June 21, 1995, against Malden Publications, Inc., Eastern Middlesex Press Publications, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges, amended charges and complaint, the Respondent failed to file an answer.

On November 6, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On November 8, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 12, 1995, notified the Respondent that unless an answer were received by September 19, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent, a corporation with an office and place of business in Malden, Massachusetts, has been engaged in publishing a newspaper. During the year ending December 31, 1994, the Respondent, in conducting its business operations, derived gross revenues in excess of \$200,000, and advertised nationally sold products, published various nationally syndicated features, and subscribed to various interstate news services, included Associated Press and United Press International. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

On January 17, 1995, the Respondent threatened its employees with a lawsuit for personal damages unless they ceased their protected concerted picketing of the Respondent's Malden facility.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by the Respondent at its Malden facility performing the markup of copy and follow-up work until the material is ready for the platemaking process, excluding all other employees, guards and supervisors as defined in the Act.

Since about 1955, and at all material times, the Union has been the exclusive collective-bargaining representative of the unit, and since that date, the Union has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from January 1, 1990, to October 6, 1992 (the 1990-1992 Agreement.) At all times since 1955, based on Section 9(a) of the Act, the Union has been, and is, the exclusive collective-bargaining representative of the unit.

Since about November 2, 1994, the Union has requested the Respondent to furnish the Union with the identity of new machinery which the Respondent claims would eliminate the need for unit employees. This information is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about November 2, 1994, the Respondent has failed and refused to furnish the Union with the requested information.

On November 2 and 10, 1994, the Respondent and the Union met and bargained concerning subjects relevant to wages, hours, terms and conditions of employment of the unit. About November 10, 1994, the Respondent implemented its bargaining proposal that all unit positions be eliminated and all members of the unit be laid off, without having reached a bona fide impasse in negotiations. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. By failing to provide the requested information and by implementing its bargaining proposal that all unit positions be eliminated and all employees be laid off, without having reached a bona fide impasse, the Respondent has also been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed to provide the Union with the identity of new machinery which the Respondent claims would eliminate the need for unit employees, information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with this information.

Furthermore, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by implementing its proposal to eliminate all unit positions and lay off all unit members on November 10, 1994, without having reached a bona fide impasse in negotiations, we shall order the Respondent to rescind its elimination of all unit positions, and offer the laid-off employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct. Backpay shall be

computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Malden Publications, Inc., Eastern Middlesex Press Publications, Inc., Malden Massachusetts, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Threatening its employees with a lawsuit for personal damages unless they cease their protected concerted picketing of the Respondent's Malden facility.

(b) Failing and refusing to provide the Boston Typographical Union No. 13, a/w Printing, Publishing and Media Sector, Communications Workers of America, AFL-CIO with necessary and relevant information.

(c) Implementing its proposal to eliminate all unit positions and lay off all unit members without bargaining in good faith to impasse with the Union. The unit includes the following employees:

All employees employed by the Respondent at its Malden facility performing the markup of copy and follow-up work until the material is ready for the platemaking process, excluding all other employees, guards and supervisors as defined in the Act.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, provide the Union with the information it requested on November 2, 1994.

(b) Rescind the elimination of all unit positions, and offer the laid-off employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct, with interest, in the manner set forth in the remedy section of this Decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Malden, Massachusetts, copies of the attached notice marked "Appendix."<sup>1</sup>

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the

Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. December 11, 1995

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William B. Gould IV, Chairman

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Margaret A. Browning, Member

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Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT threaten our employees with a lawsuit for personal damages unless they cease their protected concerted picketing of our Malden facility.

WE WILL NOT fail or refuse to provide the Boston Typographical Union No. 13, a/w Printing, Publishing and Media Sector, Communications Workers of America, AFL-CIO with necessary and relevant information.

WE WILL NOT implement our proposal to eliminate unit positions and lay off unit members without bargaining in good faith with the Union to impasse. The unit includes the following employees:

All employees employed by us at our Malden facility performing the markup of copy and follow-up work until the material is ready for the platemaking process, excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL on request, provide the Union with the information it requested on November 2, 1994.

WE WILL rescind the elimination of all unit positions, and offer these employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole, with interest, for any loss of earnings and other benefits suffered as a result of our unlawful conduct.

MALDEN PUBLICATIONS, INC., EASTERN  
MIDDLESEX PRESS PUBLICATIONS, INC.